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defendants' three-story building under a lease agreeing that the water pipes and connections were in good condition, and by which it agreed to keep the pipes in good condition, and who had exclusive control of a stopcock in the basement and another in one of its stores, and who left its store on a freezing night without cutting off the water from the entire building, was negligent in failing to take any precaution against the freezing and bursting of pipes, and hence could not recover from the landlord, for damages from the freezing and bursting of a pipe on the third floor.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. §§ 642, 643, 661, 662; Dec. Dig. § 128 (2).* 9 Va.-W. Va. Enc. Dig. 166.]

Error to Law and Chancery Court of City of Roanoke.

Action by Hunter-Smith Company, Incorporated, against one Gibson and others. Verdict for plaintiff set aside, demurrer to evidence sustained, and judgment for defendants, and plaintiff brings error. Affirmed.

Kime, Fox & McNulty, of Roanoke, for plaintiff in error.

C. B. & H. M. Moomaw, and *Hoge, Williams & Darnall*, all of Roanoke, for defendants in error.

VIRGINIA & S. W. RY. CO. *v.* SKINNER.

Sept. 11, 1916.

[89 S. E. 887.]

1. Railroads (§ 327 (8)*)—Crossing Accident—Contributory Negligence—Evidence.—There is no evidence to go to the jury on the freedom from contributory negligence of the driver of an automobile which, almost immediately after it got on a railroad track, though it did not stall, was struck by an engine, notwithstanding his testimony that when 5 feet from the track he looked and saw no engine; he having had a clear and unobstructed view over a straight track for 900 feet in the direction from which the engine came.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1051; Dec. Dig. § 327 (8).* 4 Va.-W. Va. Enc. Dig. 135.]

2. Railroads (§ 327 (8)*)—Crossing Accident—Contributory Negligence.—One in an automobile struck by an engine which could have been seen from near the crossing was guilty of contributory negligence, having looked only when he was 100 yards therefrom.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1051; Dec. Dig. § 327 (8).* 4 Va.-W. Va. Enc. Dig. 137.]

3. Negligence (§ 92*)—Contributory Negligence—Passenger in Automobile.—Relative to contributory negligence, a passenger in an au-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

tomobile struck by an engine at a crossing could not rely on the driver, but had to look for approach of the engine.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 142-146; Dec. Dig. § 92.* 7 Va.-W. Va. Enc. Dig. 340.]

4. Railroads (§ 338*)—Crossing Accident—Last Clear Chance.—The last clear chance doctrine has no application where, when an automobile went on a railroad crossing, an engine was only 30 feet away; there being no suggestion that it would have been stopped in that distance.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1096-1099; Dec. Dig. § 338.* 10 Va.-W. Va. Enc. Dig. 389.]

Error to Circuit Court, Wise County.

Two actions, one by D. H. Skinner, the other by Charles Harris, both against the Virginia & Southwestern Railway Company. Judgments for plaintiffs, and defendant brings error. Reversed and remanded.

Bullitt & Chalkley, of Big Stone Gap, and *H. H. Shelton*, of Bristol, for plaintiff in error.

Vicars & Perry, of Wise, and *Morton & Parker*, of Appalachia, for defendants in error.

WASHINGTON COUNTY *v.* RYAN, Commissioner of Revenue.

Sept. 11, 1916.

[89 S. E. 889.]

1. Taxation (§ 316*)—State Taxes—Commissioner or Revenue—Commissions—Statute—"Heretofore Assessed for State Purposes."—Code 1904, § 509, as amended by Acts 1912, c. 115, provides that the commissioner of revenue shall extend the total of the county, district, or city levies, to show the aggregate amount thereof assessed for state taxes, for which he shall receive such compensation as the supervisors may deem reasonable. The Segregation Act (Acts 1915, c. 85), surrendered to all counties, etc., taxes on realty and tangible personal property theretofore assessed for state as well as for local purposes, and by section 2 subsec. 2a, provided that on real and personal property taxes assessed for local purposes and "heretofore assessed for state purposes," a commissioner of revenue should be paid by the counties not less than the commission allowed "by law" for the assessment of state taxes, which commission was 3½ per cent. on the amount of assessments up to \$10,000. A county board of supervisors fixed a commissioner's compensation for extending all levies for local purposes prior to 1915 at \$300 per annum, and, after increas-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.